

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

STICHTING PENSIOENFONDS ABP,

Plaintiff,

V.

MERCK & CO., INC., et al.,

Defendants.

**Civil Action No. 05-5060 (SRC)**

## ORDER

**CHESLER, District Judge**

This matter having come before the Court on the motion filed by Defendant Merck & Co., Inc. and various other Individual Defendants identified in the accompanying Opinion (collectively, “Merck”) to dismiss the Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) [docket entry 67]; and it also having come before the Court on the separate motion to dismiss filed by Defendant Edward M. Scolnick (“Scolnick”) [docket entry 66]; and Plaintiff Stichting Pensioenfonds ABP having opposed the motions; and the Court having considered the papers filed by the parties; and the Court having opted to rule on the motions without oral argument pursuant to Federal Rule of Civil Procedure 78; and for the reasons expressed in the Opinion filed herewith,

**IT IS** on this 1<sup>st</sup> day of August, 2012,

**ORDERED** that Merck's motion to dismiss the Second Amended Complaint [docket entry 67] be and hereby is **GRANTED IN PART AND DENIED IN PART**; and it is further

**ORDERED** that Scolnick's motion to dismiss the Second Amended Complaint [docket entry 66] be and hereby is **GRANTED IN PART AND DENIED IN PART**; and it is further

**ORDERED** that insofar as Merck's motion seeks dismissal of the Exchange Act § 10(b) claims in their entirety, it is denied; and it is further

**ORDERED** that the Rule 10b-5(b) claim is dismissed to the extent it is predicated on the inactionable statements discussed in Section I.B of the accompanying Opinion; and it is further

**ORDERED** that the Rule 10b-5(a) and (c) "scheme liability" claim is dismissed; and it is further

**ORDERED** that the Exchange Act § 20(a) control person claim is dismissed as to Individual Defendants Gilmartin, Anstice, Frazier, Lewent and Kim; and it is further

**ORDERED** that insofar as Defendant Scolnick's motion seeks dismissal of the Exchange Act § 20(a) control person claim against him, it is denied; and it is further

**ORDERED** that the state law claims asserted in the Second Amended Complaint at Counts Four through Eight be and hereby are **DISMISSED**.

s/Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge